

R. I. 1842.

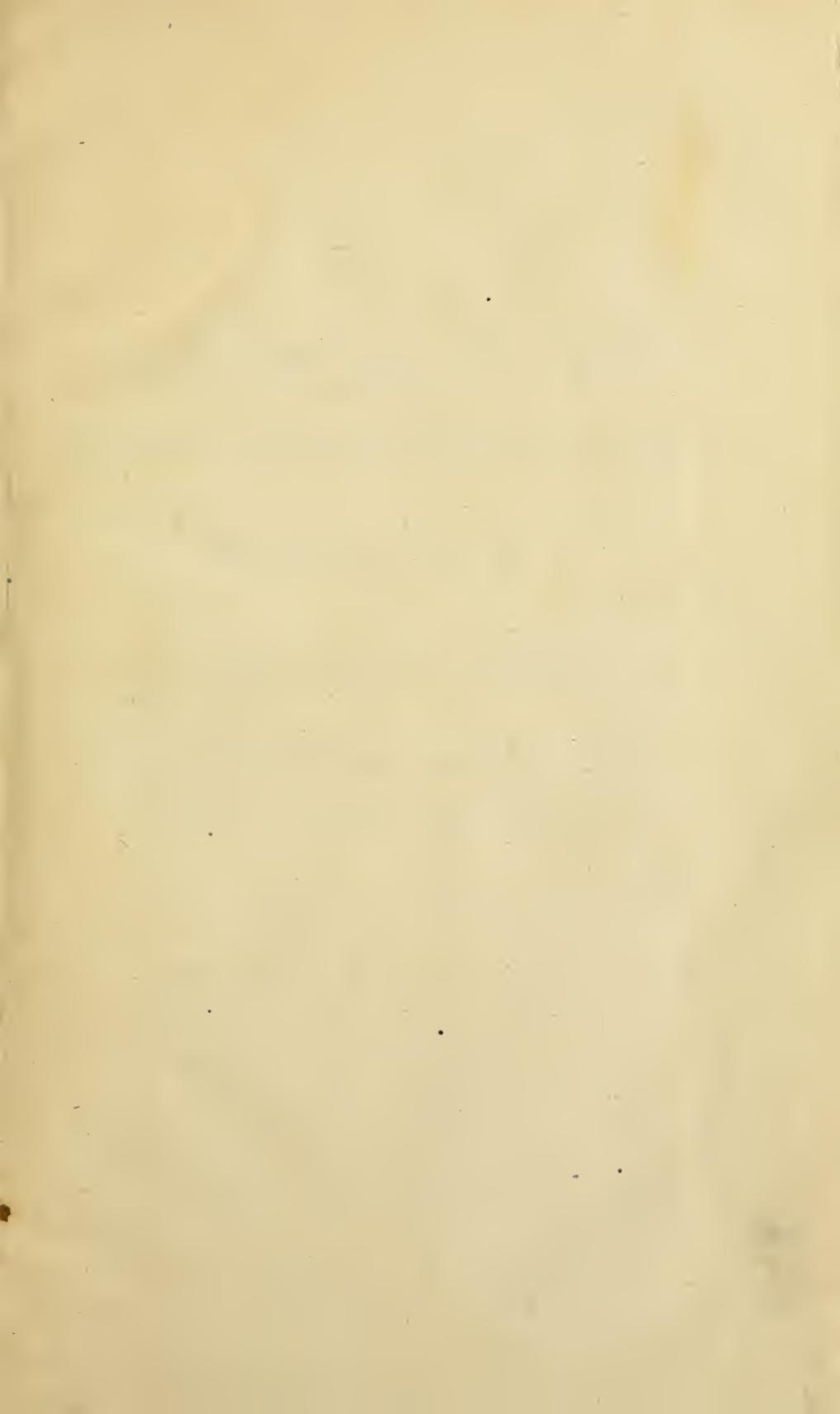
UNIVERSITY
OF PITTSBURGH
LIBRARY



Dar. Rm.
JK3225
1842
A36

THIS BOOK PRESENTED BY

James Newton Thorpe



State of Rhode-Island and Providence
Plantations.

IN GENERAL ASSEMBLY, MARCH SESSION, 1842.

R E P O R T
OF THE
C O M M I T T E E
ON THE
ACTION OF THE GENERAL ASSEMBLY, ON THE
SUBJECT OF THE CONSTITUTION.

the right to self-government and
sovereignty

and independence of the states

and the right to

self-government

and independence of the states

and the right to

self-government, freedom of the press
and the right to a free press

REPORT

*Of the Committee on the action of the General Assembly
on the subject of the Constitution.*

The Committee to whom were referred the joint resolution, requiring them to report to this Assembly a statement of all the important facts, connected with the formation and rejection of the Constitution lately submitted to the people of this State for approval or rejection, and also to report their opinion, whether any legislation on said subject is now necessary, and if any, what; beg leave to report.

That those who have set themselves in opposition to the government of this State have pretended that it was an aristocracy, and not republican in its form. On the contrary, your committee have no hesitation in asserting that this State from its settlement, has possessed a democratic form of government.

The first Charter obtained under the authority of the parliament of England in 1643-4, and the last Charter obtained in 1663, from Charles the II, secured to the people of this State the right of self government. Under that form of government which has descended to us from the patriarchs of the colony, the people have enjoyed a degree of civil and religious freedom which has never been exceeded, and seldom equalled in any other State.

This form of government has been found sufficient in peace and in war, in times when our people acknowledged allegiance to the crown of England, and since the declaration of independence. Under this form of government the people of this State became parties to the declaration of independence, to the union of the States under the confederation, and to the Constitution of the United States, under which we have enjoyed so much prosperity and happiness.

The Charter of 1663 having fixed the representation of the towns, without any reference to their subsequent population, the altered circumstances of the State has produced an inequality of representation from the towns in the House of Representatives which has created some dissatisfaction in that portion of the State which has most increased in population. Within the last eighteen years three attempts have been made to form a Constitution of government for this State, under the sanction of acts of this General Assembly.

These attempts have failed in two instances by the vote of the people, in 1824, and in 1842, and by the failure of the Convention in 1834 to form a Constitution.

This General Assembly has thus manifested a disposition to afford every facility to the people of this State, which was necessary to enable them to repeal or reform, or remodel at their pleasure their fundamental laws. The unequal representation of the towns has not therefore influenced this General Assembly so as to prevent the action of the freemen at large on this subject. And as a further instance of the liberality of this General Assembly, in the last attempt that was made to form a Constitution, the basis of representation in the Convention was altered by an act of the Assembly, so as to render the people more equally represented in that body which was to form the Constitution.

In the attempts to form a Constitution in 1824, and 1834, but very few were desirous of changing the freehold qualification for the right of suffrage. In the Convention of 1824, Mr. Pearce made a motion to extend the right of suffrage, to persons who did not possess a freehold, which was almost unanimously rejected, three only voting in its favor. In 1834 a similar motion was made by Mr. Dorr, and but seven voted in its favor.

At the January session of the General Assembly, 1841, a memorial from the town of Smithfield, was referred to a select committee of the House of Representatives, of which the Hon. Asher Robbins was chairman, who in behalf of said committee, reported as follows:

"The select committee to whom was referred the memorial of the town of Smithfield, praying this General Assembly to take the subject of the extreme inequality of the present representation from the several towns under consideration, and in such manner as seems most practicable and just to correct the evil complained of," have had the same under consideration, and the committee believing that the regular and rightful way of obtaining the object prayed for is by a convention of the freemen of the State, acting in their sovereign capacity on the subject, report the following resolution for adoption.

Resolved, by the General Assembly, (the Senate concurring with the House of Representatives therein) that it be recommended to the freemen of the State at the several town meetings in April, to instruct their Representatives as to their wishes for a State Convention to frame a new Constitution for this State, in whole or in part, with full power for that purpose.

After some remarks from several members on motion of Mr. Robbins, on the fifth of February, 1841, this resolution was recommitted to report in the morning, and the report was made the order of the day for the morrow. On the next day the memorial of the

town of Smithfield was taken up, and the resolution as amended by the committee, and after considerable debate on the question, whether the freemen should be called upon first to instruct their Representatives on the subject of calling a convention, or whether the General Assembly should pass a bill as heretofore immediately for calling a Convention—the latter course was adopted. Resolutions were then passed by this General Assembly requesting the freemen to choose in August, delegates to attend a Convention to be holden at Providence, on the first Monday of November, A. D. 1841 to frame a new Constitution for this State, either in whole or in part, with full power for this purpose, and if only for a Constitution in part, that said Convention have under their especial consideration the expediency of equalizing the representation of the towns in the House of Representatives.

At this January session, printed petitions were presented, signed by about six hundred persons in all, as follows :

To the Hon. the General Assembly of the State of Rhode-Island.

The undersigned, inhabitants and citizens of the State of Rhode-Island, would respectfully represent to your Honorable Body, that they conceive that the dignity of the State would be advanced, and the liberties of the citizen better secured, by the abrogation of the Charter granted unto this State by King Charles the Second of England, and by the establishment of a Constitution which should more effectually define the authority of the Executive and Legislative branches and more strongly recognize the rights of the citizens. Your petitioners would not take the liberty of suggesting to your Honorable Body, any course which should be pursued, but would leave the whole affair in your hands, trusting to the good sense and discretion of the General Assembly.

Your petitioners would further represent to the General Assembly that they conceive that an extension of suffrage, to a greater portion of the white male residents of the State, would be more in accordance with the spirit of our institutions, than the present system of the State, and for such an extension they ask.

Your petitioners would not suggest any system of suffrage, but would leave the matter to the wisdom of the General Assembly.

Upon both the prayers of your petitioners, they would ask the immediate and efficient action of the General Assembly, and as in duty bound will ever pray.

Signed by ELISHA DILLINGHAM, and about 580 others.

The prayer of these petitions was answered by the action of the Assembly on the Smithfield memorial. Any extension of the right

of Suffrage was most proper for the people acting by their delegates in Convention. Such a convention the General Assembly had every reason to believe would be formed under the resolutions which they had adopted.

At the last May session of this General Assembly, Mr. Mowry, of Smithfield submitted a resolution, that the resolution for a convention, to form a Constitution for the State be amended so as to elect the members in proportion to the number of delegates the towns would severally be entitled to, according to the last census, not exceeding six; to one town.

Mr. Atwell then said (if he has been reported correctly) that in connection with the resolution he would call for the petition of Elisha Dillingham and others for extending Suffrage, presented at the last session, as he thought when settling, as to how many delegates should be elected, we should enquire as to who should elect those delegates.

Mr. Ames advocated the passage of Mr. Mowry's resolution.

The resolution of Mr. Mowry, was adopted by the House by a vote of 48 to 20.

The next day, Mr. Atwell presented a bill which he had been requested to offer as meeting the views of a large portion of our citizens. It provided for a new apportionment of representation and an extension of Suffrage in choosing delegates for the Convention to frame a Constitution.

Mr. Atwell (according to the published report) said he was not then prepared to say he could go the length of the friends of the bill proposed. He wished the bill read and referred to the Committee on the Judiciary to report in June, and the bill was so disposed of.

At the last June Session (according to the published account) Mr. Atwell made a minority report from the Committee on the Judiciary, to whom was referred the act sent to the House as aforesaid. The substance of the report was, that every white male citizen of the United States over 21 years of age, who has resided in this State two years, and in the town or city where he is to vote, for six months next preceding the town meeting; and who has paid a tax on real estate or personal property, for one year previous to the time of voting, shall be allowed to vote for the choice of delegates to the Convention appointed by the General Assembly, to meet in November, next for the purpose of forming a Constitution, except persons insane, under guardianship and convicts.

There was much debate in the House growing out of this report, some denying the power of the House to pass such an act. Others admitting the power of the House, but denying its propriety. The report was defended as to the power of the Assembly, and the propriety of such an act. On the question fifty-two voted against the act proposed by Mr. Atwell, and ten in its favor.

Mr. Spencer, who voted against the act, said that the proper course for those who wished for an extension of Suffrage, is to go to the Convention appointed for the purpose of considering that subject with others, and if they found no redress there, then the proper course would be to come here.

This course so plain and proper, was not adopted ; on the contrary, measures were taken to extend Suffrage by the act of those who by law were not entitled to Suffrage, by a movement revolutionary in its character, and without any such necessity or oppression as must exist to justify revolution.

The refusal of the General Assembly to extend the right of electing delegates to the Convention, to persons who were not qualified electors, by the fundamental laws of the State, has been alledged as a justification for the Convention which formed what they have been pleased to term the People's Constitution.

Measures however, were taken before the June session, by the friends of the suffrage movement to organize a Convention by their own authority.

In May last, at a large meeting in Newport under the auspices of the Suffrage association, measures were taken for calling a convention of the people without any regard to the fundamental laws of this State, which for nearly two hundred years, have required the possession of a freehold, to entitle a person to be admitted to the exercise of political power, and to be a member of the body politic and corporate. A portion of the people, responded to the call of this unauthorized body, and met in the several towns to choose delegates to a Convention to form a Constitution for this State, to be holden at Providence, October 9th 1841.

This was in anticipation of the lawful Convention which was to meet on the first Monday of November last.

The unauthorized Convention assembled in Providence, at the time appointed. They were the delegates of a minority of the people in whatever sense the word people may be understood. A small portion of the freeholders joined in this irregular election, and although all persons were admitted to vote who chose, not more than about seven thousand two hundred votes, gave any appearance of sanction to this Convention. The number of white male citizens of the United States, resident in this State over 21 years of age exceed 22,000.

Such was the authority upon which this Convention assembled and proceeded to act. It has been generally supposed that this convention proceeded simply without law and not against law; but as they assumed the authority which under the laws of this State was to be exercised by another convention, chosen by the freemen for that purpose, they acted in opposition to the law under which the lawful convention was called, in violation of the right which be-

longed to the legally qualified electors, to make a Constitution for this State, and their doings were not only *without law* but *against law*.

This unlawful convention, elected by a minority of the people, proceeded to the solemn work of forming a Constitution to be proposed to the people of this State, and also exercised one of the most important powers of Sovereignty; of their own authority they decided what portion of the people should, and what portion should not vote upon the adoption or rejection of the Constitution. At meetings holden under their authority, their Constitution was submitted to those whom they pleased to recognize as the people. It was voted for, during three days, in open meetings, and three days by votes collected from all quarters, by any person or persons, and brought to the pretended Moderator, and with no opportunity for detection of frauds. Votes thus collected and counted by their own mode of computation, they have declared to have been given by a majority of the people, and by the same usurped authority, have proclaimed their Constitution to be the supreme law of this State.

The lawful Convention met at the time appointed, on the first Monday of November last. On the question of suffrage, they decided to admit persons to vote who did not possess a freehold qualification. They decided not to admit in future, the eldest sons of freeholders as qualified voters. On the question, what personal property qualification would be required, there were three propositions; one proposing five hundred, another three hundred, and another two hundred dollars. The vote being taken on the largest sum first, it was decided in favor of this. On further reflection, it was ascertained that rejecting the eldest sons and requiring a personal property qualification of the value of five hundred dollars, would not be an extension, but a diminution of the number entitled to vote. At this period of their deliberations, the convention adjourned, to meet again on the 14th of February, to ascertain the sentiments of their constituents on this fundamental question. Before this time however, the Suffrage Convention completed their work and declared their constitution the supreme law. At the session of this General Assembly in January last they communicated their constitution and their declaration to the General Assembly. At the commencement of the January session, Mr. Atwell, who had been a member of the suffrage convention, introduced an act reciting the fact of the adoption of the suffrage constitution by a majority of the people, and its having become the supreme law, and requiring this General Assembly to yield up its authority to the new government, which was to be formed under it.

This step being found too bold to meet with any countenance in this Assembly, he afterwards made a motion to inquire how many

of the legally qualified voters in the State, had voted for this Constitution. This motion did not prevail. The Legislature was not disposed to sanction, in any manner, the doings of this Convention, or the voting under their authority. The following resolutions were then passed by the General Assembly with much unanimity, but seven voting against them.

STATE OF RHODE-ISLAND, AND PROVIDENCE PLANTATIONS.

In General Assembly, January Session. A. D. 1842.

Whereas a portion of the people of this State, without the forms of law, have undertaken to form and establish a constitution of government for the people of this State, and have declared such Constitution to be the supreme law, and have communicated such Constitution unto this General Assembly; and whereas many of the good people of this State are in danger of being misled by these informal proceedings; therefore,

It is hereby resolved by this General Assembly, That all acts done by the persons aforesaid, for the purpose of imposing upon this State a Constitution, are an assumption of the powers of government, in violation of the rights of the existing government, and of the rights of the people at large.

Resolved, That the Convention called and organized, in pursuance of an act of this General Assembly, for the purpose of forming a Constitution to be submitted to the people of this State, is the only body which we can recognize as authorized to form such a Constitution; and to this Constitution the whole people have a right to look, and we are assured they will not look in vain, for such a form of government as will promote their peace, security and happiness.

Resolved, That this General Assembly will maintain its own proper authority, and protect and defend the legal and constitutional rights of the people. *True copy:—Witness,*

HENRY BOWEN, *Sec'ry.*

This General Assembly, though they considered this pretended Constitution as a nullity, yet were disposed to consider the number of persons who had voted for it, as expressive of an opinion in the community that the right of suffrage should be very liberally extended. A bill was introduced into the Legislature, providing for such an extension of suffrage as was afterwards adopted by the legal convention. It was however deemed improper by many that this should be done by the General Assembly, and especially as the freemen had already sent delegates to a Convention, to decide upon this matter. As a substitute for this bill, and with a view to conciliation, the following act was passed:—

STATE OF RHODE-ISLAND AND PROVIDENCE PLANTATIONS.

In General Assembly, January Session, A. D. 1842.

An Act in amendment of an Act entitled "An Act revising the Act entitled an Act regulating the manner of admitting Freemen, and directing the method of electing officers in this State."

Whereas the good people of this State, having elected delegates to a Convention to form a Constitution, which Constitution, if ratified by the people, will be the supreme law of the State, therefore,

Be it enacted by the General Assembly, as follows:—

All persons now qualified to vote, and those who may be qualified to vote under the existing laws previous to the time of such their voting, and all persons who shall be qualified to vote under the provisions of such Constitution, shall be qualified to vote upon the question of the adoption of said Constitution.

True copy:—*Witness,*

HENRY BOWEN, *Sec'y.*

The legally authorized Convention met at the time to which they had adjourned, (the 14th of February,) finished their work, and submitted their Constitution to the people to be voted upon on the 21st, 22d, and 23d of March, 1842. The provisions of this Constitution extended the right of suffrage to every white male native citizen of the United States, of the age of 21 years, who has resided in this State two years, and in the town or city where he offers to vote, six months next preceding his voting, excepting lunatics, paupers, &c.; and to such naturalized citizens as possessed such freehold qualification as has been heretofore required for all citizens, on a residence of three years in this State after their naturalization, and six months in the town or city in which they offer to vote, next preceding the time of voting.

This extension was as liberal to all native born American citizens as that granted by the so called "People's Constitution," except that two years residence was required instead of one. It was a further extension than was contemplated by the bill already mentioned, introduced by Mr. Atwell, at the June Session.

In relation to those who were born in foreign countries, it was not deemed prudent that they should be admitted to the right of suffrage as freely as the native born citizen, and not until, by a longer residence, and a freehold qualification, there was such "evidence of permanent common interest with and attachment to the community" as would render it safe to extend to them, this most important right.

It was to have been expected that the native born citizens of the United States, resident among us, who have been so desirous of an extension of suffrage, would have accepted this Constitution in

the same spirit of conciliation and compromise with which it was offered them. Many have done so ; and many more would have done so, if pains had not been taken by their interested leaders, to pledge them to vote against this Constitution before it was ever formed. And many have said that they would not vote for it if it had been word for word like their own.

Such a spirit is beyond the reach of conciliation or compromise. Nothing can satisfy such men but a triumph over the law, and a prostration of the government to their unhallowed purposes.

By a small majority (676) the Constitution has been rejected. We have no doubt many voted against it from their attachment to the freehold qualification. Some voted against it because the colored people were not placed on the same platform with white men ; others because they considered the representation in the Legislature unequal ; and we have reason to believe that many voted against it, being deceived by the grossest misrepresentations, and having been told they would lose, if this Constitution was adopted, certain rights and privileges to which they were well known to be much attached.

We have seen, on the part of a portion of the free suffrage men, a zeal, in opposition to this Constitution, which offered to them more than they originally asked, that cannot be accounted for, upon the principles of interest and prudence which govern men in ordinary times. With them, the contest has ceased to be for principle ; it has become a contest for power ; not for power under ordinary circumstances, for the honors or emoluments of office, under the same laws and the same government, but a contest for power, in violation of every righteous principle, to the destruction of all law, and all legitimate government.

We cannot for a moment doubt on which side all good citizens will array themselves when such a contest is brought to that issue, which is threatened by those resolutions these deluded men have already passed, ‘That they will support their Constitution “by all necessary means” and repel force by force.’

The duty of the government is most plain. We are required to protect the citizen by legislation when the laws are defective, to warn the deluded how they act, in violation of the laws, and to exert the means put into our hands to vindicate the rights of the government, and to guard the peace and happiness of the State.

With this view, your Committee recommend the passage of a bill herewith presented, which, in their opinion, is necessary to meet the exigency of the times. Your Committee also recommend the passage of the following resolutions :

Resolved, That his Excellency the Governor, be requested to issue his proclamation to the good people of this State, exhorting them to give no aid or countenance to those who, in violation of the

law, may attempt to set up a government in opposition to the existing government of this State, and calling upon them to support the constituted authorities for the preservation of the public peace, and in the execution of those laws on which the security of all depends.

Resolved, That his Excellency, the Governor, be, and he is hereby authorized to adopt such measures, as in his opinion may be necessary, in the recess of this Legislature, to execute the laws and preserve the State from domestic violence; and that he be, and is hereby authorized, to draw on the General Treasurer for such sums as may be required for these purposes.

Resolved, That the report and the act accompanying, entitled "an act in relation to offences against the sovereign power of the State," be published in all the newspapers in this State; that ten thousand copies be printed in pamphlet form, and that the Secretary of State cause the same to be forthwith distributed in the several towns of this State and the city of Providence; and that five copies of the same be sent to the Governors of each State, and a copy each to the President, Vice President, members of the Cabinet, Senators, and members of the House of Representatives of the United States.

AN ACT in relation to offences against the Sovereign power of the State.

Whereas, in a free government it is especially necessary that the duties of the citizen to the constituted authorities should be plainly defined, so that none may confound our regulated American liberty with unbridled license; and whereas, certain designing persons, have for some time past, been busy with false pretences, amongst the good people of this State, and have framed and are now endeavoring to carry through, a plan for the subversion of our government under assumed forms of law, but in plain violation of the first principles of constitutional right, and many have been deceived thereby: And whereas this General Assembly, at the same time that it is desirous to awaken the honest and well meaning to a sense of their duty, is resolved by all necessary means, to guard the safety and honor of the State, and overlooking what is past, to punish such evil doers in future, in a manner due to their offences:

Be it it enacted by the General Assembly as follows:

Section 1. All town, ward or other meetings of the freemen, inhabitants, or residents of this State, or of any portion of the same, for the election of any town, city, ward, county or state officer or officers, called or held, in any town of this State, or in the city of Providence, except in the manner, for the purposes, at the times, and by the freemen, by law prescribed, are illegal and void; and any person or persons who shall act as moderator or moderators, warden or wardens, clerk or clerks, in such pretended town, ward or other meetings hereafter to be held, or in any name or manner receive, record or certify votes for the election of any pretended town, city, ward, county or state officers, shall be deemed guilty of a misdemeanor and be punished by indictment with a fine not exceeding one thousand, nor less than five hundred dollars, and be imprisoned for the term of six months; *provided however,*

that this act is not intended to apply to cases, in which by accident or mistake some prescribed form or forms of calling town or ward meetings of the freemen of the several towns of this State, and of the city of Providence shall be omitted or overlooked.

Sec. 2. Any person or persons who shall in any manner signify that he or they will accept any executive, legislative, judicial or ministerial office or offices by virtue of any such pretended elections in any such pretended town, ward or other meeting or meetings, or shall knowingly suffer or permit his or their name or names, to be used as a candidate or candidates therefor, shall be adjudged guilty of a high crime and misdemeanor, and be punished by indictment in a fine of two thousand dollars, and be imprisoned for the term of one year.

Sec. 3. If any person or persons, except such as are duly elected thereto according to the laws of this State, shall, under any pretended Constitution of government for this State or otherwise, assume to exercise any of the Legislative, Executive, or Ministerial functions of the offices of Governor, Lieutenant Governor, Senators, Members of the House of Representatives, Secretary of State, Attorney General, or General Treasurer of this State, or within the territorial limits of the same, as the same are now actually held and enjoyed, either separately or collectively, or shall assemble for the purpose of exercising any of said functions, all and every such exercise of, or meeting for the purpose of exercising all, any, or either of said functions, shall be deemed and taken to be an usurpation of the sovereign power of this State, and is hereby declared to be treason against the State, and shall be punished by imprisonment during life, as is now by law prescribed.

Sec. 4. All offences under this act shall be triable before the Supreme Judicial Court only. Any person or persons arrested under the same, and also for treason against the State, may be imprisoned or held in custody for trial in the jail of such county of the State as the Judge or Justice issuing the warrant may order or direct, and the sheriff or other officer charged with the service of such warrant,

shall, without regard to his precinct, have full power and authority to take such person or persons, and him or them to commit to any county jail in this State which may be designated by such Judge or Justice; and it shall be the duty of all sheriffs, deputy sheriffs, town sergeants, constables and jailors to govern themselves accordingly. All indictments under this act, and also all indictments for treason against this State, may be preferred and found in any county of this State without regard to the county in which the offence was committed; and the Supreme Judicial Court shall have full power for good cause, from time to time, to remove for trial any indictment which may be found under this act, or for treason against the State, to such county of the State, as they shall deem best for the purpose of ensuring a fair trial of the same; and shall upon the conviction of any such offender or offenders, have full power to order, and from time to time to alter, the place of imprisonment of such offender or offenders to such county jail within this State, or to the State's prison, as to them shall seem best for the safe custody of such offender or offenders, any act, law or usage to the contrary notwithstanding.

Secretary's Office, April 4, 1842.

The foregoing is a true copy of the Report of Committee, with the Resolutions and Act passed by the General Assembly thereon.

Witness,

HENRY BOWEN, Sec'ry.

